

(1) A preliminary order is subject to review by the Appeals Board where it is alleged that the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 44-551; K.S.A. 44-534a.

(2) The Preliminary Order dated November 16, 1994 should be reversed and remanded with directions for a hearing to consider evidence by all parties relating to claimant's request for vocational rehabilitation assessment.

A hearing was held in this case on August 30, 1994, to take evidence relating to claimant's request for temporary total disability benefits and vocational rehabilitation benefits. Following that hearing, the Administrative Law Judge ordered payment of certain past temporary total disability benefits. He held in abeyance, however, the ruling on the request for vocational rehabilitation benefits because it appeared at the time of the hearing that claimant might return to his employment with respondent.

On November 11, 1994, claimant's attorney wrote the Administrative Law Judge, advising that claimant had been taken back to work but was subsequently terminated. Claimant renewed his request for vocational rehabilitation assessment and temporary total disability benefits. On November 16, 1994, without further evidence or hearing, the Administrative Law Judge entered the Order which is the subject of this appeal.

Respondent asserts he did not receive the November 11, 1994 letter from claimant's counsel. He contends the Order of November 16, 1994, exceeded the Administrative Law Judge's jurisdiction because respondent had no notice or opportunity to present evidence. Respondent also contends that had there been the opportunity to do so, it would have presented evidence indicating claimant had been terminated for reasons unrelated to his workers compensation claim. A grievance was filed and the termination was changed to a thirty-day suspension allowing claimant to return to work for respondent on December 5, 1994.

The Appeals Board agrees that the Order dated November 16, 1994, should be reversed. The Administrative Law Judge had conducted a hearing and understandably assumed that the November 11, 1994 letter from claimant's counsel was simply advice on the status of the claimant's return to employment for respondent. The November 11, 1994 letter shows a copy to respondent's counsel and the Administrative Law Judge may well have assumed there was no dispute as to the fact presented by the November 11, 1994 letter. However, under the unusual circumstances in this case, the Order of November 16, 1994 was the equivalent of an Order entered without notice or opportunity for respondent to be heard. The Appeals Board therefore concludes the Order should be reversed and the action remanded for a hearing to be conducted at which all parties should be permitted to introduce evidence relating to claimant's need for vocational rehabilitation benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated November 16, 1994, should be, and the same is hereby, reversed and the action remanded with direction to conduct a hearing with opportunity for all parties to present evidence.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Frederick J. Greenbaum, Kansas City, KS
Frank A. Caro, Jr., Kansas City, MO
John D. Clark, Administrative Law Judge
George Gomez, Director